

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAMONA J. R.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

CASE NO. 3:23-CV-5172-DWC

ORDER AFFIRMING DEFENDANT'S
DECISION TO DENY BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant's denial of Plaintiff's application for disability insurance benefits ("DIB") and supplemental security income ("SSI"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 2.

After considering the record, the Court concludes the Administrative Law Judge ("ALJ") properly evaluated the medical opinion evidence, Plaintiff's subjective symptom testimony, and lay witness testimony. The ALJ also properly assessed Plaintiff's residual functional capacity

1 (“RFC”) and did not err at step four. Accordingly, the Court affirms the ALJ’s decision in
 2 finding Plaintiff not disabled.

3 FACTUAL AND PROCEDURAL HISTORY

4 On November 12, 2019, Plaintiff filed for DIB and SSI, alleging disability as of August
 5 8, 2019. *See* Dkt. 12; Administrative Record (“AR”) 86, 113, 142, 169. The applications were
 6 denied upon initial administrative review and on reconsideration. *See* AR 110, 137, 166, 193.
 7 ALJ Allen Erickson held a hearing on August 25, 2022. AR 50-82. During the hearing, Plaintiff
 8 amended her alleged onset date to October 6, 2019, the day she experienced a mental health
 9 breakdown at work. AR 61. On October 5, 2022, the ALJ issued a decision finding Plaintiff not
 10 disabled. AR 17-37. On December 28, 2022, the Appeals Council denied Plaintiff’s request to
 11 review the ALJ’s decision, making the ALJ’s decision the final decision of the Commissioner.
 12 *See* AR 1-6; 20 C.F.R. §§ 404.981, 416.1481. Plaintiff now seeks judicial review of the ALJ’s
 13 decision.

14 In Plaintiff’s Opening Brief, Plaintiff contends the ALJ: (1) erred in evaluating medical
 15 evidence, (2) erred in evaluating her subjective symptom testimony, (3) erred in evaluating lay
 16 witness evidence, and (4) erred in assessing her RFC, and thus based his step four findings on an
 17 erroneous RFC. Dkt. 12, p. 1.

18 STANDARD OF REVIEW

19 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of
 20 social security benefits if the ALJ’s findings are based on legal error or not supported by
 21 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
 22 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

23 ///

I. Whether the ALJ Properly Evaluated Medical Evidence

Plaintiff contends the ALJ failed to properly evaluate the medical evidence. Dkt. 12, pp. 2-8.

A. Step two

At step two, the ALJ determined Plaintiff has the severe impairment of bipolar disorder. AR 22. Plaintiff contends the ALJ erred by disregarding her other diagnoses, including psychotic disorder, unspecified; post-traumatic stress disorder (“PTSD”); major depressive disorder; anxiety with panic attacks and agoraphobia; attention deficit hyperactivity disorder (“ADHD”), and cervical, thoracic, and lumbar strain. Dkt. 12, p. 2. The claimant has the burden at step two to show that he or she has a medically determinable impairment that is severe. *See Bustamante v. Massanari*, 262 F.3d 949, 953–54 (9th Cir. 2001). An impairment is “not severe” if it does not “significantly limit” the ability to conduct basic work activities. 20 C.F.R. §§ 404.1522, 416.922.

Here, Plaintiff cites to a physical examination prior to her amended alleged onset date, a list of her mental health diagnoses, and a portion of a medical evaluation, but does not explain how these records demonstrate the conditions she listed are “severe” as defined by the regulations. *See* Dkt. 12, p. 1 (citing AR 993, 1077, 1127). Absence of objective medical evidence of a severe impairment may justify an adverse step two determination. *See Ukolov v. Barnhart*, 420 F.3d 1002, 1006 (9th Cir. 2005). Plaintiff has failed to meet her burden of showing her other conditions “significantly limit” her ability to perform basic work activities, therefore Plaintiff’s argument fails.

Plaintiff also argues the ALJ erred in discounting the medical opinions of Dr. Morteza Sarlak and Ms. Jasmyne Lyons, and in giving weight to the opinions of Dr. Michael Regets and

Dr. John D. Gilbert. Dkt. 12, pp. 2-8. Plaintiff also summarizes much of the rest of the medical evidence but fails to make any substantive argument about the ALJ's evaluation of any other opinions other than those discussed herein. *Id.* The Court will not consider matters that are not “specifically and distinctly” argued in the plaintiff's opening brief. *Carmickle v. Commissioner, Social Sec. Admin.*, 533 F.3d 1155, 1161 n. 2 (9th Cir. 2008) (quoting *Paladin Assocs., Inc. v. Mont. Power Co.*, 328 F.3d 1145, 1164 (9th Cir. 2003)). The Court thus will only consider the ALJ's evaluation of the opinions of the medical sources specifically raised.

Under the applicable rules, the ALJ must “articulate how [he] considered the medical opinions” and “how persuasive [he] find[s] all of the medical opinions” by considering their supportability, consistency, relationship with the claimant, specialization, and other factors. 20 C.F.R. §§ 404.1520c(c), 416.920c(c). The ALJ is specifically required to consider the two most important factors, supportability and consistency. 20 C.F.R. §§ 404.1520c(a), 416.920c(a). The supportability factor requires the ALJ to consider the relevance of the objective medical evidence and the supporting explanations presented by the medical source to justify their opinion. 20 C.F.R. §§ 404.1520c(c)(1), 416.920c(c)(1). The consistency factor involves consideration of how consistent a medical opinion is with the other record evidence. 20 C.F.R. § 416.920c(c)(2). Further, under the new regulations, “an ALJ cannot reject an examining or treating doctor's opinion as unsupported or inconsistent without providing an explanation supported by substantial evidence.” *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).

B. Dr. Sarlak and Ms. Lyons

In December 2019, Dr. Sarlak opined Plaintiff “is not capable to perform her normal job duties” and recommended Plaintiff “needs at least six months of resting period along with on going counseling therapy, and medication management.” AR 1072. Ms. Lyons opined Plaintiff's

1 ability to understand, remember, and carry out simple and complex instructions is “poor”; ability
2 to sustain concentration and persist in work-related activity at a reasonable pace, including
3 regular attendance at work and completing work without interruption, is “fair”; and ability to
4 interact with coworkers, superiors, and the public, and adapt to usual stresses encountered in the
5 workplace is “extremely poor.” AR 1128. The ALJ discounted both opinions, explaining they
6 reflected Plaintiff’s condition during “a mental health crisis, and not her general psychological
7 state” and thus inconsistent Plaintiff’s overall record. *See* AR 27-28.

8 The ALJ’s inconsistency finding is reasonable. Dr. Sarlak’s opinion focuses only on
9 Plaintiff’s November 11 session when she discussed her mental health breakdown from the
10 previous month. *See* AR 1072 (“According to the information that conveyed to me during the
11 therapy session on 11/11/19 ... According to the information that has been presented to me
12 during her session of 11/11/19 ...”). The notes from that session provide that after her
13 breakdown, Plaintiff was hospitalized and on suicide watch for eight days, released home, and
14 then assigned to a therapist. AR 1080-81. They do not include any medical evidence regarding
15 Plaintiff’s inability to perform job duties after treatment and her hospitalization. *See id.* In
16 contrast, treatment notes from other providers after Plaintiff’s discharge show she “remained
17 stable” on medication. AR 1141. Plaintiff reported no mood swings, suicidal thoughts, and
18 hallucinations. AR 1142-43, 1147, 1152, 1161, 1245, 1250, 1299, 1302. Plaintiff was also
19 cooperative, had appropriate effect, was able to answer questions directly without hesitation, and
20 had no difficulties with her reading or writing skills. AR 1245, 1504. While Plaintiff did report
21 depression and anxiety symptoms on occasion, she also described them as “well controlled,”
22 while her examinations showed her thought process and judgment and reasoning were within
23 normal limits, and her memory intact. AR 1150, 1504, 1510, 1513, 1516-17. Dr. Sarlak’s session
24

1 notes outside of November 11 also fail to support Plaintiff's argument, as they include Plaintiff's
2 mental health history prior to her breakdown and Plaintiff's reports of symptom improvement
3 after medication and medication adjustments. *See* AR 1073-79, 1082-93. Given these treatment
4 notes, the ALJ reasonably found Dr. Sarlak's opinion inconsistent with Plaintiff's record.

5 With regard to Ms. Lyons's opinion, the ALJ's description that it reflects only a specific
6 period of Plaintiff's mental health crisis is not entirely accurate. The record shows Ms. Lyons
7 reviewed Plaintiff's records and conducted a mental status exam during her evaluation. AR
8 1123-29. However, the ALJ's overall finding that it is inconsistent with Plaintiff's record is
9 supported by substantial evidence. Ms. Lyons's opinion that Plaintiff has "poor" ability to carry
10 out and complete even simple instructions was based on Plaintiff's "inability to give complete
11 answers and carry out full tasks" during her evaluation. AR 1128. Yet, as discussed, Plaintiff's
12 other treatment notes show she was able to answer questions without hesitation, her thought
13 processes were within normal limits, and her memory intact. AR 1150, 1245, 1504, 1510, 1513,
14 1516-17. Ms. Lyons explained Plaintiff's "extremely poor" ability to interact with others and
15 adapt was based on Plaintiff's inability to communicate with her evaluator, and Plaintiff's history
16 of resulting to violence and active hallucinations. AR 1128. But as discussed, Plaintiff
17 examinations showed she was cooperative, alert and oriented, with normal thought content,
18 speech, affect, and mood and no evidence of hallucinations or delusions. AR 1142-43, 1147,
19 1152, 1161, 1245, 1250, 1299, 1302, 1504. Overall, Ms. Lyons's proposed limitations are at
20 odds with the ALJ's cited treatment notes. Therefore, in finding Ms. Lyons's opinion
21 inconsistent with Plaintiff's record, the ALJ did not err.

22 The ALJ also noted Dr. Sarlak and Ms. Lyons had only examined Plaintiff on a few
23 occasions. AR 27-28. While not the most important factor, how frequent a medical source has
24

1 examined a claimant is factor the ALJ can consider. 20 C.F.R. §§ 404.1520c(3)(ii),
 2 416.920c(3)(ii). That Dr. Sarlak and Ms. Lyon had limited relationships with Plaintiff further
 3 supports the ALJ's decision to discount their opinions. *See id.*

4 Plaintiff cites several treatment notes throughout the record to support her assignment of
 5 error with the ALJ's evaluation of the medical opinion evidence. Dkt. 12, pp. 5-7. Plaintiff's
 6 citations are unpersuasive, as some are from prior to her amended alleged onset date. *See*
 7 *Carmickle*, 533 F.3d at 1165 ("Medical opinions that predate the alleged onset of disability are of
 8 limited relevance."). Moreover, they include Plaintiff's own reports of symptom improvement,
 9 negating Dr. Sarlak's and Ms. Lyons's opinion, or notes about Plaintiff's physical condition,
 10 which neither medical source addressed. *See* AR 993, AR 1152, 1421, 1452-55, 1463, 1161.

11 **C. Dr. Regets and Dr. Gilbert**

12 Both Dr. Regets and Dr. Gilbert opined Plaintiff is not significantly limited to moderately
 13 limited with her understanding and memory; sustained concentration and persistence; social
 14 interaction; and adaptation. AR 104-08, 131-35, 160-63, 187-90. Plaintiff contends the ALJ erred
 15 in finding their opinions persuasive, but fails to provide a particularized argument about the
 16 ALJ's error, stating only that their "opinions are lacking in both supportability and consistency."
 17 Dkt. 12, pp.7-8. Given the lack of specificity in Plaintiff's argument, Plaintiff failed to
 18 demonstrate any harmful error on this issue. *See Bailey v. Colvin*, 669 Fed. Appx. 839, 840 (9th
 19 Cir. 2016) (citing *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012)) (finding no error where
 20 the claimant did not "demonstrate prejudice from any errors"). The Court therefore rejects
 21 Plaintiff's conclusory argument. *See Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685,
 22 692, n. 2 (9th Cir. 2009) (rejecting "any invitation" to find error where the claimant failed to
 23 explain how the ALJ harmfully erred). Further, the Court cannot say the ALJ's supportability
 24

1 and consistency findings are not supported by substantial evidence. Both physicians provided
 2 narrative explanations for their proposed limitations, and the evidence cited by the ALJ showing
 3 improvement of Plaintiff's symptoms and largely normal mental status examinations are
 4 consistent, rather than contradictory, to their opinions. AR 1142-43, 1147, 1152, 1161, 1245,
 5 1250, 1299, 1302, 1504.

6 **II. Whether the ALJ Properly Evaluated Plaintiff's Subjective Symptom** 7 **Testimony**

8 Plaintiff testified that in October 2019, she had a mental health breakdown at work that
 9 led to an eight-day hospitalization. AR 61-62. She stated that since that incident, she has felt
 10 confused, depressed, and stressed. AR 62. She explained she does not like crowds, cannot always
 11 understand, follow or remember directions, and cannot work with others. AR 64, 72, 74-76. She
 12 stated she rarely leaves the house by herself. AR 76. Plaintiff also testified to having ADHD,
 13 bipolar disorder, and obsessive-compulsive disorder. AR 77.

14 If an ALJ rejects the testimony of a claimant once an underlying impairment has been
 15 established, the ALJ must support the rejection "by offering specific, clear and convincing
 16 reasons for doing so." *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (citing *Dodrill v.*
 17 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993)); *see also Reddick v. Chater*, 157 F.3d 715, 722 (9th
 18 Cir. 1998) (citing *Bunnell v. Sullivan*, 947 F.2d 343, 346-47 (9th Cir. 1991)). As with all of the
 19 findings by the ALJ, the specific, clear and convincing reasons also must be supported by
 20 substantial evidence in the record as a whole. 42 U.S.C. § 405(g); *see also Bayliss*, 427 F.3d at
 21 1214 n.1 (citing *Tidwell*, 161 F.3d at 601). "The standard isn't whether our court is convinced,
 22 but instead whether the ALJ's rationale is clear enough that it has the power to convince."
 23 *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022).

1 Here, the ALJ explained Plaintiff's impairments could reasonably expect to cause some
2 of her alleged symptoms, but found her statements regarding the "intensity, persistence, and
3 limiting effects" of those symptoms inconsistent with the record. AR 26. In discounting
4 Plaintiff's testimony, the ALJ explained Plaintiff's symptoms after her discharge were "well-
5 controlled." AR 26. Evidence that medical treatment helped a claimant "return to a level of
6 function close to the level of function they had before they developed symptoms or signs of their
7 mental disorders . . . can undermine a claim of disability." *Wellington v. Berryhill*, 878 F.3d 867,
8 876 (9th Cir. 2017) (quotations omitted). The ALJ also noted Plaintiff's mental status
9 examinations were "unremarkable." AR 26-27. "When objective medical evidence in the record
10 is *inconsistent* with the claimant's subjective testimony, the ALJ may indeed weigh it as
11 undercutting such testimony." *Smartt*, 53 F.4th at 498.

12 Here, evidence cited by the ALJ shows Plaintiff reported feeling depressed, difficulties
13 with concentration, and hallucinations of people walking alongside her. AR 1500. However, her
14 mental status examination from the same appointment shows her thought process, judgment, and
15 reasoning were within normal limits, and her memory intact. AR 1504. The examination also
16 shows no difficulty with reading or writing, and no delusions or hallucinations. *Id.* Later
17 examinations show similar results, as well notations regarding Plaintiff's "graduation from
18 [therapy] services due to decrease in reported symptoms." *See* AR 1507, 1510, 1513, 1516-17,
19 1521, 1523. Further, Plaintiff's more recent mental health records show she was discharged from
20 therapy because she had met her treatment goals. AR 1524. Her counselor noted she "no longer
21 meets medical necessity," and Plaintiff reported that "everything's good." *Id.* Given these
22 records, the ALJ's finding that Plaintiff's symptoms are not as intense and limiting as she alleged
23
24

1 during the hearing is well supported by the record. Therefore, in discounting Plaintiff's
2 testimony for these reasons, the ALJ did not err.

3 The ALJ also discounted Plaintiff's testimony based on her ability to perform activities of
4 daily living, including driving, shopping, going to church, and spending time with others. AR 27.

5 An ALJ may discount a claimant's symptom testimony when it is inconsistent with the
6 claimant's general activity level. *See Molina v. Astrue*, 674 F.3d 1104, 1112–13 (9th Cir. 2012);
7 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1040 (9th Cir. 2007). Here, the ALJ cited Plaintiff's
8 functional reports where she described performing those activities. AR 439-45. The ALJ's
9 finding is not entirely persuasive. Plaintiff's ability to partake in social activities with others does
10 negate her testimony about her anxiety around being others or difficulties leaving the house, but
11 Plaintiff also wrote about her difficulties with concentrating and understanding and remembering
12 instructions, which does not contradict part of her testimony. *See* AR 443-44. Therefore, in
13 discounting Plaintiff's testimony based on her activity level, the ALJ partially erred. However,
14 because the ALJ also provided other valid reasons, supported by substantial evidence, to
15 discount that portion of Plaintiff's testimony, the ALJ's error is harmless. *See Carmickle*, 533
16 F.3d at 1162 (including an erroneous reason among other reasons to discount a claimant's
17 credibility does not negate the validity of the overall credibility determination and is at most
18 harmless error where an ALJ provides other reasons that are supported by substantial evidence).

19 Plaintiff maintains the medical record aligns with her testimony and supports her
20 argument by citing to the same records she used to dispute the ALJ's treatment of the medical
21 opinion evidence. Dkt.12, pp. 5-7. But again, Plaintiff's citations are from prior to her amended
22 alleged onset date and thus unpersuasive. *See Carmickle*, 533 F.3d at 1165. Further, they
23
24

undermine Plaintiff's testimony because they include normal mental status examinations and her own reports of improvement. *See* AR 993, AR 1152, 1421, 1452-55, 1463, 1161.

III. Whether the ALJ Erred in Evaluating Lay Witness Testimony

Plaintiff contends the ALJ erred by failing to discuss lay witness testimony from a Social Security Administration interviewer, and by failing to explain how he weighed testimony provided by Plaintiff's husband. Dkt. 12, pp.13-14. Defendant argues the agency employee did not provide probative evidence and ALJs are no longer required to articulate how they assess non-medical statements in their decisions. Dkt. 17, p. 12.

Whether an ALJ need evaluate lay witness testimony is an issue the Ninth Circuit has yet to address. *See Stephens v. Kijakazi*, No. 22-35998, 2023 WL 6937296, at *2 (9th Cir. Oct. 20, 2023) ("We have not yet addressed whether under the new regulations an ALJ is still required to provide germane reasons for discounting lay witnesses."). From this Court's perspective, the regulations do not provide that the ALJ is free to disregard lay witness testimony, only that the ALJ is not required to articulate how [he] considered it according to the same requirements used in evaluating evidence from medical sources. *See* 20 C.F.R. §§ 404.1520c(e), 416920c(e)). However, "an ALJ's failure to comment upon lay witness testimony is harmless where 'the same evidence that the ALJ referred to in discrediting the claimant's claims also discredits the lay witness's claims.'" *Molina*, 674 F.3d at 1122 (quoting *Buckner v. Astrue*, 646 F.3d 549, 560 (8th Cir.2011)). The Court has found the ALJ properly discounted Plaintiff's testimony. *See supra*, Section II. The interviewer's comment about Plaintiff's "difficulty understanding issues" and Mr. Rose's report do not describe any limitations beyond those provided by Plaintiff in her testimony. *See* AR 437, 462-69. The ALJ's valid reasons for discounting Plaintiff's testimony therefore apply equally in discounting lay witness testimony. *See Molina*, 674 F.3d at 1122.

**IV. Whether the ALJ's RFC Assessment is Supported by Substantial Evidence
and Whether the ALJ Based his Step Four Findings on an Erroneous RFC**

Plaintiff contends the ALJ erred by failing to account in her RFC limitations related to all her impairments. Dkt. 12, pp. 2-3. Consequently, Plaintiff also contends, the ALJ based his step four findings on an erroneous RFC. *Id.*, pp. 14-15. However, an ALJ has no obligation to include in a claimant's RFC limitations from properly rejected opinions and testimony. *See Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008). The Court has found the ALJ did not err in his assessment of the medical evidence and Plaintiff's testimony, and the ALJ did not harmfully err in his evaluation of lay witness testimony. Accordingly, Plaintiff's RFC is supported by substantial evidence, and the ALJ's step four findings were not based on an erroneous RFC assessment.

CONCLUSION

Based on the foregoing reasons, the Court hereby finds the ALJ properly concluded Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is AFFIRMED.

Dated this 19th day of January, 2024.



David W. Christel
Chief United States Magistrate Judge